

**United States Department of Labor
Employees' Compensation Appeals Board**

W.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Conyers, GA, Employer**

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**Docket No. 18-1651
Issued: March 7, 2019**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 29, 2018 appellant filed a timely appeal from a March 19, 2018 merit decision and a June 28, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish an injury while in the performance of duty on January 31, 2018, as alleged; and (2) whether OWCP abused

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence following the March 19, 2018 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

its discretion by denying appellant's request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On February 8, 2018 appellant, then a 54-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 31, 2018 he stepped down onto a floor board, reached across the seat to retrieve a parcel, and heard a pop in his right leg. He listed the nature of his injury as a sprain of his right lower leg. On the reverse side of the claim form, the employing establishment noted that appellant stopped work that day and returned to work on February 2, 2018. The employing establishment challenged the claim.

In a report dated February 1, 2018, Dr. Andrea E. Andrews, Board-certified in family medicine, related appellant's history of standing on a vehicle platform and reaching for a package when he heard a pop in his calf. She diagnosed right leg muscle strain and indicated that appellant could return to work on February 1, 2018 with restrictions.

By development letter dated February 12, 2018, OWCP requested that he submit additional factual and medical evidence in support of his traumatic injury claim. It noted that the evidence provided was insufficient to establish that appellant actually experienced the incident alleged to have caused injury, and that no diagnosis of a condition had been provided. OWCP indicated the type of factual and medical evidence needed to support his claim. It requested that appellant complete a questionnaire to establish the factual component of his claim. OWCP afforded appellant 30 days to submit the requested evidence.

Appellant submitted medical reports dated February 1, 5, 12, and 21, 2018 from Dr. Andrews. In each report, Dr. Andrews diagnosed a strain of the right gastrocnemius muscle and indicated that appellant was able to return to work in a modified-duty capacity on February 1, 2018.

By decision dated March 19, 2018, OWCP denied appellant's claim finding the evidence submitted was insufficient to establish that the employment incident occurred as alleged. It noted that appellant had not responded to the February 12, 2018 questionnaire and therefore had not substantiated the factual element of his claim. OWCP concluded, therefore, that appellant had not met the requirements to establish that he sustained an injury as defined by FECA.

On June 13, 2018 OWCP received appellant's request for an oral hearing before an OWCP hearing representative. The postmark indicated that it was mailed June 6, 2018.

On June 19, 2018 OWCP received a witness statement dated May 23, 2018, and a supplemental statement from appellant dated May 24, 2018.

By decision dated June 28, 2018, OWCP denied appellant's request for an oral hearing before an OWCP hearing representative. It found that he was not entitled to a hearing as a matter of right because his request was not made within 30 days of the issuance of its March 19, 2018 decision. OWCP exercised its discretion and determined that the issue in the case could equally well be addressed by requesting reconsideration and submitting new evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷ Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish an injury while in the performance of duty on January 31, 2018, as alleged.

On his claim form, appellant alleged that he sustained a sprain to his right leg when he stepped down onto a floor board and reached across the seat to retrieve a parcel.

Appellant's description of the traumatic incident is vague and fails to provide specific detail to determine the manner in which he sustained his alleged injury.⁹ He did not describe the mechanism of injury.¹⁰ Appellant was provided an opportunity by OWCP to establish how his alleged injury occurred. By development letter dated February 12, 2018, OWCP requested that he describe the factual circumstances of his injury and provided him with a factual development questionnaire for completion. Appellant did not respond to the questionnaire and he failed to

³ *Supra* note 1.

⁴ *E.A.*, Docket No. 17-0330 (issued December 12, 2018); *see T.H.*, 59 ECAB 388 (2008).

⁵ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *M.M.*, Docket No. 18-0769 (issued September 10, 2018); *see Julie B. Hawkins*, 38 ECAB 393 (1987).

⁷ *M.M.*, *id.*; *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *M.M.*, *supra* note 6; *see I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁹ *See A.E.*, Docket No. 17-0522 (issued April 13, 2018).

¹⁰ *See M.L.*, Docket No. 16-1723 (issued March 1, 2017).

provide a narrative statement detailing the traumatic incident prior to the issuance of OWCP's denial of his claim on March 19, 2018. By failing to describe the employment incident and circumstances surrounding his alleged injury, he has not established that the traumatic injury occurred, as alleged.¹¹ Thus, the Board finds that he has not met his burden of proof. Inasmuch as appellant has failed to establish the first component of his claim, that the incident occurred at the time, place, and in the manner alleged, the Board need not review the medical evidence.¹²

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

LEGAL PRECEDENT -- ISSUE 2

Section 8124 of FECA¹³ provides that a claimant is entitled to a hearing before an OWCP representative when a request is made within 30 days after issuance of an OWCP final decision.¹⁴

Section 10.615 of Title 20 of the Code of Federal Regulations provides, “[a] hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: [a]n oral hearing or a review of the written record.”¹⁵

Under section 10.616(a), “[a] claimant injured on or after July 4, 1966, who had received a final adverse decision by the district OWCP may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.”¹⁶

OWCP's regulations further provide that a request received more than 30 days after OWCP's decision is subject to OWCP's discretion¹⁷ and the Board has held that OWCP must exercise this discretion when a hearing request is untimely.¹⁸

¹¹ *Supra* note 9.

¹² *R.F.*, Docket No. 18-1218 (issued February 7, 2019); *Ted A. Off*, Docket No. 96-0536 (issued February 5, 1998).

¹³ *Supra* note 1.

¹⁴ 5 U.S.C. § 8124(b)(1).

¹⁵ 20 C.F.R. § 10.615.

¹⁶ *Id.* at § 10.616(a).

¹⁷ *Id.* at § 10.616(b).

¹⁸ *D.W.*, Docket No. 17-1413 (issued December 18, 2018); *Samuel R. Johnson*, 51 ECAB 612, 613-14 (2000).

ANALYSIS -- ISSUE 2

The Board finds that OWCP has not abused its discretion by denying appellant's request for an oral hearing as untimely filed under 5 U.S.C. § 8124(b).

A request for a hearing must be made within 30 days after the date of the issuance of an OWCP final decision. OWCP noted that appellant's request for hearing was postmarked June 6, 2018. As the request was submitted more than 30 days following issuance of the March 19, 2018 decision, the Board finds that it was untimely filed and appellant was not entitled to an oral hearing as a matter of right.

OWCP has the discretionary power to grant an oral hearing even if the claimant is not entitled to a review as a matter of right. The Board finds that OWCP, in its June 28, 2018 decision, properly exercised its discretion by indicating that it had considered the matter and had denied appellant's request for oral hearing as his claim could be equally well addressed through a reconsideration application. Because reconsideration exists as an alternative appeal right to address the issue raised by OWCP's March 19, 2018 decision, the Board finds that OWCP has not abused its discretion in denying appellant's untimely hearing request.¹⁹

Accordingly, the Board finds that OWCP properly denied appellant's June 6, 2018 request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish an injury while in the performance of duty on January 31, 2018, as alleged. The Board also finds that OWCP has not abused its discretion by denying appellant's request for an oral hearing as untimely filed pursuant to 5 U.S.C. § 8124(b).

¹⁹ See *J.N.*, Docket No. 18-0646 (issued January 28, 2019).

ORDER

IT IS HEREBY ORDERED THAT the June 28 and March 19, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 7, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board